

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Keith Biggadike et al.

Serial. No.: 10/533,168

International Filing Date: October 30, 2003

Confirmation No.: 9215

Title: *Phenylethanolamine Derivatives for the Treatment of Respiratory Diseases*

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**COMMISSIONER FOR PATENTS**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE**

Sir:

This paper is in response to the Notification of Defective Response ("Notification") dated February 13, 2008. The response is believed to be timely in that it is filed within the one-month deadline set forth in the Notification. For the reasons set forth below, it is respectfully submitted that the Notification is in error in that the response is NOT DEFECTIVE and that the application be forwarded to the Examiner for substantive examination on the merits.

### **REMARKS**

The Notification indicates that the response and documents forwarded therewith on January 31, 2008 are defective for the following reasons:

(I) "Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and \*b), identifying the application by the International application number and the international filing date. The current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it:

is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68

(II) surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.492(h) of \$130 was not received

Applicants will address each of points (I) and (II) in succession.

#### **(I) The current Oath or Declaration is in compliance with 37 CFR 1.68 and thus with 37 CFR 1.497 (a) and (b)**

37 CFR 1.68 states that:

"Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by written declaration. Such declaration may be used in lieu of the oath otherwise required, if, and only if, the declarant is on the same document, warned that ***willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon.*** The declarant must set forth in the body of the declaration that ***all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true***". (emphasis added)

Applicants refer the Office to the following passage ("Passage") on page 2 of the Declaration. The signatures of the declarants appear in the same document as the Passage and the Passage is set forth in the body of the Declaration per the requirements of 37 CFR 1.68:

***"I hereby declare that all statements made herein are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon"*** (emphasis added)

Clearly the elements of 37 CFR 1.68 are present in the Passage as emphasized above. The Passage, and accordingly the Declaration that all the inventors signed in view of this Passage, is, without question, not defective. For the convenience of the Office, a copy of the executed Declaration having the Passage on Page 2 is provided herewith.

**(II) The Surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.492(h) of \$130 was received**

Applicants did authorize payment to the above surcharge by virtue of allowing withdrawal from the Deposit Account as indicated on the Missing Parts Transmittal Letter dated March 29, 2006, a copy of which is enclosed herewith. In the event that such payment was found insufficient, the Office is again authorized to charge all or part of this payment to Deposit Account no. 07-1392.

File No. PG5019USw  
Serial. No.: 10/533,168

Respectfully submitted,

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Enclosures:

- 1) Applicants' Declaration
- 2) Missing Parts Transmittal Letter